



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: John E. Jones, USN (Retired) (Deceased)

File: B-222678

Date: November 28, 1986

DIGEST

Where Navy member marries a second wife without dissolving his first marriage, his first wife is his legal widow on the date of his death and is entitled to the balance of his unpaid military retired pay.

DECISION

This is in response to an appeal, submitted by Mrs. Effie W. Jones, to our Claims Group's decision of November 7, 1985, denying her, as widow of John E. Jones, USN (Retired) (Deceased), the balance of his unpaid military retired pay of \$61.77. The Claims Group did not authorize payment to Mrs. Jones because another woman, Ms. Rada Rae Jones, also claimed entitlement as Mr. Jones' widow. The Claims Group denied payment to both women, on the basis that neither clearly established entitlement based on a marriage relationship. Our review of the record leads us to believe that John E. Jones was married to Effie but was not legally married to Rada Rae since, upon entering into a marriage agreement with Rada Rae, he had not divorced Effie. As such, Effie Jones is John E. Jones' widow and is entitled to the unpaid retired pay.

BACKGROUND

Marriage certificates in the record of this case show that John Jones married Effie on July 24, 1965, in Brooklyn, New York. On April 27, 1976, he entered into a marriage agreement with Rada Rae in New York City. There is no evidence in the record indicating that John Jones was ever divorced from his wife, Effie.

John Jones died on November 19, 1982. After his death, both Effie and Rada Rae submitted claims for amounts due him from the U.S. Navy. The Navy had doubts about the proper recipient of the money and it sent both claims to our Claims Group on April 10, 1984. The Claims Group denied the claims of

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both women and Effie appealed the decision, reasserting her claim as the deceased's widow.

ANALYSIS

Section 2771 of title 10, United States Code, provides in part:

"(a) In the settlement of the accounts of a deceased member of the armed forces who dies after December 31, 1955, an amount due from the armed force of which he was a member shall be paid to the person highest on the following list living on the date of death:

"(1) Beneficiary designated by him in writing
* * *.

"(2) Surviving spouse."

* * * * *

The statute's implementing regulation is 4 C.F.R. § 34.1 (1986).

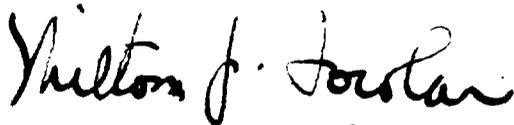
Since John Jones did not designate a beneficiary to receive payments due him from the armed forces, his surviving spouse is entitled to the funds. Both Effie and Rada Rae produced certificates for the record evidencing their marriages to John.

In the case of multiple marriages by the same individual there is a presumption that the second marriage is valid and that the first marriage was legally terminated. However, this presumption may be rebutted when the available facts indicate that a legal termination of the earlier marriage did not occur. See James A. Smalls, B-212148, July 23, 1984.

In this case, Effie states that she and John were never divorced and that she was unaware that John had entered into another marriage. Additionally, there is no evidence in the record suggesting that such a divorce ever took place. Furthermore, Rada Rae, after receiving the Claims Group settlement, similarly does not express any knowledge of a prior marriage to Effie or a legal termination of that marriage.

A person who has contracted a valid marriage does not have the capacity to contract a subsequent marriage while such marriage remains undissolved by death or divorce; thus, the subsequent marriage is a nullity. Chief Petty Officer Howard E. Moore, USN, (Retired) (Deceased), B-194469, May 14, 1979. This is the case in New York. See Domestic Relations Law § 6, McKinney's Consolidated Laws of New York. Because John was married to Effie, he was legally precluded from entering into a valid marriage with Rada Rae.

In accordance with the above, it is our view that Effie Jones was John E. Jones' legal surviving wife at the time of his death and, as his widow, is entitled to the arrears of retired pay due at his death.



Acting Comptroller General
of the United States